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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,771	09/26/2001	Marc Delvaux	60705-1920	1750
24504	7590	02/07/2006	EXAMINER AHMED, SALMAN	
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 100 GALLERIA PARKWAY, NW STE 1750 ATLANTA, GA 30339-5948			ART UNIT 2666	PAPER NUMBER

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/963,771

Applicant(s)

DELVAUX, MARC

Examiner

Salman Ahmed

Art Unit

2666

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: 1. Applicant's arguments see pages 24-40 of the Remarks section, filed 1/24/2006, with respect to the rejection of claims 1-105 except cancelled claims 2, 21 and 94 have been fully considered but they are not persuasive.

2. Applicant argues that the Office Action admits that Steer does not teach a system incorporating either the limitation of "fragmenting the first data stream without creating a fragment header in response to a higher second data stream priority" or fluidly resuming transmission of lower priority suspended data streams in accordance with the data stream transmission information preserved using the priority sorting mechanism without creating new frame headers for the lower priority suspended data streams" because of the existence of the continuation field of Steer. However, examiner respectfully disagrees with this assertion. The present claim language is broad and in view of the broadest reasonable interpretation of this language, Steer does in fact disclose the above-mentioned steps. As indicated in the previous office action, Steer teaches a communication network (column 9 lines 18-26, figures 5-9 and 11A) where a lower priority packet is in the process of being transmitted, the existing packet is "interrupted" and the high priority packets are inserted into the data stream. More specifically, if a high priority packet is to be sent while an existing packet is being transmitted, the transmission of the MPEG blocks of that packet is interrupted, and the high priority packet is inserted into the data stream for transmission. In order to resume transmission (column 10 lines 16-33) of the interrupted packet, the MPEG block used for transmitting the interrupting packet is provided with a continuation field. The continuation field of the MPEG block is set to zero to signal that what follows thereafter in the block payload is the continuation of the interrupted DOCSIS packet. Examiner respectfully further points out to figures 5, 6 and 7 in support of the argument.

3. Applicant argues that Steer teaches away from the claimed invention with respect to the above-mentioned limitations. Applicant mentions DOCSIS and MPEG packets being used in the reference and discusses its formats with some additional arguments. Applicant argues the reference would not suggest to a person of ordinary skill in the art either alone or in combination with another reference a system or method of the claimed invention. However, examiner respectfully disagrees with this assertion. The present claim language is broad and in view of the broadest reasonable interpretation of this language, Steer does in fact disclose the above-mentioned limitations.

4. Applicant argues that Howe discloses packets that are only header-less as far as not having a source and destination address attached to each packet for the purposes of making network routing more efficient. Further, Howe also discloses that the Final Destination Router 4 may have to reinsert the address for delivery to Real-Time Receiver 5. In contrast, the claimed invention does not define systems or methods where a source or destination address are unknown; therefore the application of Howe is improper, because any improved efficiency taught by the reference are not realized in the same fashion as with the claimed invention. Furthermore, efficient network routing is not an objective of the claimed invention because the source and destination are known prior to transmission of data. However, examiner respectfully disagrees with this assertion. The present claim language is broad and in view of the broadest reasonable interpretation of this language, the rejections of the claims citing references of Steer in view Howe is proper. Moreover, The above-mentioned arguments are not explicitly reflected in the claim language. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art at the time the invention was made. See *In re Keller* 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

5. Examiner respectfully suggests the applicant to refer to the previous office action for individual rejections of the claims..

DANG TON
PRIMARY EXAMINER